

1 Mark J. Dillon (Bar No. 108329)
2 Stephen F. Tee (Bar No. 172340)
3 Michael P. Masterson (Bar No. 239246)
4 Gatzke Dillon & Ballance LLP
5 1525 Faraday Avenue, Suite 150
Carlsbad, California 92008
Telephone: (760) 431-9501
Facsimile: (760) 431-9512

6 Russell P. Brown (Bar No. 84505)
7 J. Peter Olson (Bar No. 67032)
8 Gordon & Rees LLP
9 101 West Broadway, Suite 1600
San Diego, California 92101
Telephone: (619) 696-6700
Facsimile: (619) 696-7124

10 Attorneys for Defendants M/Y Triton, et al.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 SEA PRESTIGIO, LLC, a Delaware limited
15 liability company,

) Case No.: 3:10-CV-02412-BTM (MDD)

IN ADMIRALTY

) DEFENDANTS' STATUS REPORT
) REGARDING STATE ACTION,
) PURSUANT TO THIS COURT'S
) ORDER GRANTING STAY
) APPLICATION

) Judge: Hon. Barry T. Moskowitz
) Action Filed: 11/23/10

18 M/Y TRITON, Republic of Marshall Islands
19 (Official No. 70070), Its Engines, Machinery,
20 Appurtenances, etc., *In Rem*; SPEARFISH
21 VENTURES, LTD., a British Virgin Islands
22 Company; FBP INVESTMENTS, LP, a
23 Delaware limited partnership; JAMES P.
24 BALDWIN, as co-trustee of the James P.
25 Baldwin Trust No. 1 and Nancy L. Baldwin
26 Trust No. 1; NANCY L. BALDWIN, as
co-trustee of the James P. Baldwin Trust
No. 1 and Nancy L. Baldwin Trust No. 1;
CACHAL INVESTMENTS, S. DE R.L.
DE C.V., a Mexican corporation, *In
Personam*, and DOES 1-10,

)

27 Defendants.

1

1 **I. INTRODUCTION**

2 Defendants, M/Y Triton, *et al.* ("Federal Defendants"), submit this status report pursuant to this
 3 Court's Order granting the Federal Defendants' application to stay this action, dated April 11, 2011. This
 4 action was stayed pending resolution of the previously filed action in Orange County Superior Court,
 5 which involves the same parties and issues as the instant action ("the State Action"). The stay order
 6 requires all parties to file a status report regarding the State Action every three months from the date of
 7 the Order. In short, the State Action is progressing as anticipated, with a trial date set for February 27,
 8 2012.

9 **II. STATUS OF STATE ACTION**

10 **A. STATE ACTION BACKGROUND**

11 On October 27, 2010, FBP Investments, LP, Spearfish Ventures, LTD, and Cochal Investments,
 12 S. de R.L. de C.V. -- defendants in this action -- filed the State Action against the plaintiff in this action,
 13 Sea Prestigio, LLC, and related parties ("Sea Prestigio"). The State Action alleges claims for usury,
 14 breach of contract (a loan agreement), breach of covenant of good faith and fair dealing, inducing breach
 15 of contract, intentional interference with contractual relations, false promise, and various declaratory
 16 relief claims.

17 Thereafter, on November 23, 2010, in response to the State Action, Sea Prestigio filed this action
 18 against the Federal Defendants, seeking primarily to foreclose on a ship mortgage, and alleging default of
 19 the parties' loan agreement. On November 29, 2010, the Sea Prestigio filed a notice to remove the State
 20 Action to the U.S. District Court for the Central District of California. However, on January 31, 2011,
 21 the Central District remanded the State Action to Orange County Superior Court. On April 11, 2011,
 22 this Court issued an Order granting a stay of this action pending resolution of the previously filed State
 23 Action.

24 **B. CURRENT STATUS OF THE STATE ACTION**

25 The State Action has progressed since this action was stayed, and is set for trial on February 27,
 26 2012. On May 9, 2011, Federal Defendants filed a first amended complaint in the State Action. On or
 27 about June 28, 2011, Sea Prestigio answered the amended complaint and filed a cross-complaint in the
 28 State Action. The Federal Defendants answered the cross-complaint on about July 28, 2011. In

1 addition, the parties have completed written discovery, and have exchanged expert witness information.

2 Further, on August 17, 2011, the parties filed cross-motions for summary judgment/adjudication
 3 on both the amended complaint and Sea Prestigio's cross-complaint. The motions were heard on
 4 November 3, 2011. The trial court in the State Action denied the majority of the motions. In short, all
 5 material causes of action in both the amended complaint and cross-complaint survived summary
 6 judgment, and all parties remain in the action.

7 Accordingly, the trial in the State Action is set to commence on February 27, 2012. The parties
 8 are diligently preparing the action for trial.

9 **III. CONCLUSION**

10 The State Action is moving promptly toward trial and final judgment, and no action is required
 11 by the Court at this time.

12 January 4, 2012

Respectfully submitted,

13 Attorneys for Defendants M/Y Triton, *et al.*
 14 Gatzke Dillon & Ballance LLP

15 By: /s/ Mark J. Dillon

16 Mark J. Dillon
 17 Gatzke Dillon & Ballance LLP
 18 1525 Faraday Avenue, Suite 150
 19 Carlsbad, California 92008
 20 mdillon@gdandb.com
 21 (760) 431-9501

22 **CERTIFICATE OF SERVICE**

23 The undersigned hereby certifies that all counsel who have consented to electronic service are
 24 being served with a copy of the foregoing document via the Southern District of California CM/ECF
 25 system on January 4, 2012.

26 /s/ Mark J. Dillon

27 Mark J. Dillon